

REMARKS

Claims 1-25 were pending in the case at the time of the Office Action. All are subject to a restriction requirement. Of these, claims 23-25 are cancelled.

Claim amendments

Claims 4-22 are amended to remove multiple dependencies, so that each resulting claim is dependent from a single claim. Applicant respectfully submits that this is a non-narrowing amendment to the claims and/or is not made for a reason relating to patentability.

Information Disclosure Statement

As this action is not an action on the merits, the applicant notes that the Examiner has not indicated that a review of the previously-filed Information Disclosure Statement has been made. The Examiner is reminded to review the IDS before an action on the merits.

Elections/restrictions

This case is a US national stage entry under 35 USC 371, which has been acknowledged by the Examiner. The Examiner is reminded that the international Searching Authority found unity of invention with regard to all claims and issued the International Search Report on that basis.

In the present restriction, the Examiner asserts that the Group I invention (claims 1-20) is directed to a method of treating waste material and that the Group II invention (claims 21-25) is directed to an apparatus for carrying out the method.

The Examiner's characterization of these claims is not correct. While claims 21 and 22 are apparatus claims, claim 23 is a method claim. In fact, claims 23-25 are claims in an "omnibus" format, so they are cancelled above.

The remaining claims in Group II are both method claims and both, as amended, contain the same technical feature as claim 1.

The basis for the Examiner's restrictions seems to be based upon a determination by the Examiner that claim 1 lacks novelty over US Patent 4,518,458 to Greenwood, although there is nothing in the record to indicate that the Examiner has conducted any substantive examination. It is noteworthy that the Administrative Instructions for the PCT Rules, Annex B, Unity of Invention, as found in the MPEP,

indicates, at part (c)(iii), that the determination of whether unity of invention exists is intended to be applied even before the commencement of the international search, and that an initial determination of unity of invention may be reconsidered on the basis of the results of the prior art search. It is the applicant's understanding that the Australian Patent Office, acting as ISA and applying the unity of invention standard in the first place, determined unity of invention to exist. After searching, the ISA did not reconsider and withdraw the determination

It is applicant's position, therefore, that without an express basis beyond that of the ISA examiner, the Examiner lacks sufficient facts to overrule the ISA examiner's determination. The basis asserted by the Examiner, that is, that Greenwood '458 is an "X" reference, is nothing more than what was found by the ISA.

Although applicant traverses, applicant recognizes the obligation to elect one group for examination, and elects Group I, that is, claims 1-20. Accordingly, claims 21 and 22 are marked above as "withdrawn – currently amended."

The Examiner is requested to reconsider the restriction requirement and, if the requirement is not withdrawn, to acknowledge that the non-elected claims may be rejoined upon indication of allowable subject matter in an independent claim in the elected Group.

The Applicant respectfully submits that the present application is now in condition for examination and such action is earnestly requested.

Respectfully submitted,

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